

Heather R. Boshak  
FOX ROTHSCHILD LLP  
Formed in the Commonwealth of Pennsylvania  
75 Eisenhower Parkway, Suite 200  
Roseland, New Jersey 07068  
Telephone: (973) 992-4800  
Facsimile: (973) 992-9125  
*Attorneys for Defendant*  
*Magellan Health Services, Inc.*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

MARGARET HOWE,

Plaintiff,

vs.

MAGELLAN HEALTH SERVICES, INC.,  
JOHN DOE AND JANE DOES 1-10 (fictitious  
individuals presently unidentifiable individuals)  
AND ABC CORPORATIONS 1-10 (fictitious  
corporations or other business entities presently  
unidentifiable),

Defendants.

Civil Action No.

**NOTICE OF REMOVAL**  
(Diversity)

TO: THE HONORABLE JUDGES OF THE  
UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

Defendant Magellan Health Services, Inc. ("Magellan"), a corporation organized under the laws of the State of Delaware, with its principal place of business in the State of Connecticut, by and through its attorneys, Fox Rothschild LLP, respectfully says:

1. Plaintiff Margaret Howe commenced the above-captioned action on or about March 7, 2011 by filing a Complaint in the Superior Court of New Jersey, Law Division, Morris County, entitled Margaret Howe v. Magellan Health Services, Inc., John Does and Jane Does 1-10 (fictitious individuals presently unidentifiable individuals) and ABC Corporations 1-10 (fictitious corporations or other business entities presently unidentifiable), Docket No. MRS-L-685-11. Said action is now pending in that Court.

2. On March 14, 2011, Plaintiff served a copy of the Summons and Complaint upon Magellan. Receipt of the Summons and Complaint on that date was Magellan's first receipt of a pleading containing a claim for relief asserted by Plaintiff which could be removed to this Court. A copy of the foregoing papers, together with the Acknowledgment of Service, which constitute the pleadings to date, are annexed hereto as Exhibit A.

3. The Court has jurisdiction over this matter, and removal is proper, pursuant to 28 U.S.C. § 1332, as there is complete diversity of citizenship, in that:

a. Magellan is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 55 Nod Road, Avon, Connecticut 06001.

b. According to the Complaint, Plaintiff resides at 21 Shelley Place, Morristown, New Jersey 07960.

e. The above-captioned action is a civil action in which the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states. Therefore, this Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332, which may be properly removed pursuant to 28 U.S.C. § 1441.

4. This Notice of Removal is filed within the time provided by 29 U.S.C. § 1446(b) and the Federal Rules of Civil Procedure.

5. Upon the filing of this Notice of Removal, Magellan shall give written notice thereof to Andrew S. Berns, Esq., of Einhorn, Harris, Ascher, Barbarito & Frost, attorneys for Plaintiff, and Magellan shall file copies of said Notice and Notice of Filing of Removal with the Court Clerk, Superior Court of New Jersey, Law Division, Morris County, New Jersey.

6. By filing this notice, Magellan does not waive any defenses which may be available to it, specifically including, but not limited to, the absence of venue in this Court or in the Court from which this action has been removed.

7. There are no other named defendants in this case, so no further consent for removal is needed.

WHEREFORE, Magellan removes the above-captioned action now pending against it in the Superior Court of New Jersey, Law Division, Morris County, to the United States District Court for the District of New Jersey, wherein it shall proceed as an action originally commenced therein.

Respectfully submitted,

FOX ROTHSCHILD LLP

By: /s/ Heather R. Boshak  
Heather R. Boshak  
*Attorneys for Defendant*  
*Magellan Health Services, Inc.*

Dated: April 8, 2011

**CERTIFICATE OF SERVICE**  
**(via FedEx)**

I hereby certify that on this date I caused a true copy of the foregoing Notice of Removal to be served on the attorneys for Plaintiff, via prepaid overnight express delivery (FedEx) sent to their last known address as follows:

Andrew S. Berns, Esq.  
Einhorn, Harris, Ascher, Barbarito & Frost  
Attorneys for Plaintiff  
165 E. Main Street  
P.O. Box 3010  
Denville, NJ 07834-3010

I hereby further certify that on this date I caused a Notice of Filing of Removal together with a copy of the Notice of Removal to be delivered for filing by prepaid overnight express delivery (FedEx) to:

Clerk, Superior Court of New Jersey  
Law Division, Morris County  
Morris County Courthouse  
Washington and Court Streets  
Morristown, NJ 07963

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

\_\_\_\_\_  
s/Heather R. Boshak

Heather R. Boshak

Dated: April 8, 2011

## EXHIBIT A

EINHORN, HARRIS, ASCHER, BARBARITO & FROST  
A Professional Corporation  
165 E. Main Street  
P.O. Box 3010  
Denville, New Jersey 07834-3010  
(973) 627-7300  
Attorneys for Plaintiff

---

MARGARET HOWE	)	SUPERIOR COURT OF NEW JERSEY
Plaintiffs,	)	LAW DIVISION : MORRIS COUNTY
	)	
vs.	)	Docket No.: MRS-L-00685-011
	)	Civil Action
MAGELLAN HEALTH SERVICES, INC.,	)	
JOHN DOE AND JANE DOES 1-10	)	SUMMONS
(fictitious individuals presently	)	
unidentifiable individuals) and ABC	)	
CORPORATIONS 1-10 (fictitious	)	
corporations or other business entities	)	
presently unidentifiable)	)	
	)	
Defendants.	)	

FROM THE STATE OF NEW JERSEY

**TO THE ABOVE-NAMED DEFENDANT(S): MAGELLAN HEALTH SERVICES, INC., ITS AGENTS, SERVANTS AND/OR EMPLOYEES OR THE PERSON IN CHARGE OF PLACE OF BUSINESS**

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The Complaint attached to this Summons states the basis for this lawsuit. If you dispute this Complaint, you or your attorney must file a written Answer or motion and proof of service with the deputy clerk of the Superior Court in the County above within thirty-five (35) days from the date you receive this Summons, not counting the date you received it. (The address of each deputy clerk of the Superior Court is provided.) If the Complaint is one in foreclosure, then you must file your written Answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, CN 971, Trenton, New Jersey 08625. A filing fee payable to the Clerk of the Superior

Court and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your Answer or motion when it is filed. You must also send a copy of your Answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written Answer or motion (with fee of \$135.00 for Law Division and \$135.00 for Chancery Division and completed Case Information Statement) if you want the Court to hear your defense.

If you do not file a written Answer or motion within thirty-five (35) days, the Court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services Office in the county where you live. A list of these offices is provided. If you do not have an attorney and are eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A list of these numbers is also provided.

Jennifer M. Perez  
Jennifer M. Perez,  
Acting Clerk of the Superior Court

DATED: March 14, 2011

Name of defendant to be served: MAGELLAN HEALTH SERVICES  
Address of the defendant to be served: 6950 COLUMBIA GATEWAY DRIVE  
COLUMBUS, MD 21046

ATLANTIC COUNTY  
Deputy Clerk of the  
Superior Court  
Civil Division, Direct Filing  
1201 Bacharach Blvd.  
First Fl.  
Atlantic City, NJ 08401  
LAWYER REFERRAL  
609-345-3444  
LEGAL SERVICES  
609-348-4200

CAPE MAY COUNTY  
Deputy Clerk of the  
Superior Court  
Central Processing Office  
9 N. Main Street  
Box DN-209  
Cape May Court House, NJ 08210  
LAWYER REFERRAL  
609-463-0313  
LEGAL SERVICES  
609-465-3001

HUDSON COUNTY  
Deputy Clerk of the Superior Court  
Superior Court  
Civil Records Dept.  
Brennan Court House - 1st Floor  
583 Newark Ave.  
Jersey City, NJ 07306  
LAWYER REFERRAL  
201-798-2727  
LEGAL SERVICES  
201-792-6363

BERGEN COUNTY  
Deputy Clerk of the  
Superior Court  
Case Processing Section  
Room 119  
Justice Center - 10 Main St.  
Hackensack, NJ 07601-0769  
LAWYER REFERRAL  
201-488-0044  
LEGAL SERVICES  
201-487-2166

CUMBERLAND COUNTY  
Deputy Clerk of the  
Superior Court  
Civil Case Management  
Office  
Broad & Fayette Sts.  
P.O. Box 615  
Bridgeton, NJ 08302  
LAWYER REFERRAL  
856-692-6207  
LEGAL SERVICES  
856-451-0003

HUNTERDON COUNTY  
Deputy Clerk of the Superior Court  
Civil Division  
65 Park Avenue  
Flemington, NJ 08862  
LAWYER REFERRAL  
908-735-2611  
LEGAL SERVICES  
908-782-7979

BURLINGTON COUNTY  
Deputy Clerk of the  
Superior Court  
Central Processing Office  
Attn: Judicial Intake  
First Floor Courts Facility  
49 Rancocas Rd.  
Mt. Holly, NJ 08060  
LAWYER REFERRAL  
609-261-4862  
LEGAL SERVICES  
609 261-1088

ESSEX COUNTY  
Deputy Clerk of the  
Superior Court  
237 Hall of Records  
465 Martin L King Jr Blvd  
Newark, NJ 07102  
LAWYER REFERRAL  
973-622-7753  
LEGAL SERVICES  
973-624-4500

MERCER COUNTY  
Deputy Clerk of the Superior Court  
Local Filing Office, Courthouse  
175 South Broad St.  
P.O. Box 8068  
Trenton, NJ 08650  
LAWYER REFERRAL  
609-585-6200  
LEGAL SERVICES  
609-695-6249

CAMDEN COUNTY  
Deputy Clerk of the  
Superior Court  
Civil Processing Office  
1st Fl. Hall of Records  
101 So. Fifth St.  
Camden, NJ 08103  
LAWYER REFERRAL  
856-964-4520  
LEGAL SERVICES  
856-964-2010

GLOUCESTER COUNTY  
Deputy Clerk of the  
Superior Court  
Civil Case Management  
Office  
Attn: Intake  
First Fl., Court House  
1 North Broad St., P.O. Box 129  
Woodbury, NJ 08096  
LAWYER REFERRAL  
856-848-4589  
LEGAL SERVICES  
856-848-5360

MIDDLESEX COUNTY  
Deputy Clerk of the Superior Court  
Administration Building  
Third Floor  
1 Kennedy Sq., P.O. Box 2633  
New Brunswick, NJ 08903-2633  
LAWYER REFERRAL  
732-828-0053  
LEGAL SERVICES  
732-249-7600



MONMOUTH COUNTY  
Deputy Clerk of the  
Superior Court  
71 Monument Park  
P.O. Box 1262  
Court House, East Wing  
Freehold, NJ 07728-1262  
LAWYER REFERRAL  
732-431-5544  
LEGAL SERVICES  
732-866-0020

MORRIS COUNTY  
Deputy Clerk of the  
Superior Court  
Civil Division  
30 Schuyler Pl.  
PO Box 910  
Morristown, NJ 07960-0910  
LAWYER REFERRAL  
973 267-5882  
LEGAL SERVICES  
973-285-6911

OCEAN COUNTY  
Deputy Clerk of the  
Superior Court  
Court House, Room 119  
118 Washington Street  
Toms River, NJ 08754  
LAWYER REFERRAL  
732-240-3666  
LEGAL SERVICES  
732-341-2727

PASSAIC COUNTY  
Deputy Clerk of the  
Superior Court  
Civil Division  
Court House  
77 Hamilton St.  
Paterson, NJ 07505  
LAWYER REFERRAL  
973-278-9223  
LEGAL SERVICES  
973-345-7171

SALEM COUNTY  
Deputy Clerk of the  
Superior Court  
92 Market St., P.O. Box 18  
Salem, NJ 08079  
LAWYER REFERRAL  
856-935-5629  
LEGAL SERVICES  
856-964-2010

SOMERSET COUNTY  
Deputy Clerk of the  
Superior Court  
Civil Division Office  
New Court House, 3rd Fl.  
P.O. Box 3000  
Somerville, NJ 08876  
LAWYER REFERRAL  
908-685-2323  
LEGAL SERVICES  
908-231-0840



SUSSEX COUNTY  
Deputy Clerk of the  
Superior Court  
Sussex Cty Judicial Center  
43-47 High Street  
Newton, NJ 07860  
LAWYER REFERRAL  
973-267-5882  
LEGAL SERVICES  
973-383-7400

UNION COUNTY  
Deputy Clerk of the  
Superior Court  
First Fl., Court House  
2 Broad St.  
Elizabeth, NJ 07207-6073  
LAWYER REFERRAL  
908-353-4715  
LEGAL SERVICES  
908-527-4769

WARREN COUNTY  
Deputy Clerk of the  
Superior Court  
Civil Division Office  
Court House  
Belvidere, NJ 07823-1500  
LAWYER REFERRAL  
973-267-5882  
LEGAL SERVICES  
908-475-2010



## Appendix XII-B1

	<b>CIVIL CASE INFORMATION STATEMENT (CIS)</b>		<b>FOR USE BY CLERK'S OFFICE ONLY</b>	
	Use for initial Law Division Civil Part pleadings (not motions) under Rule 4:5-1 <b>Pleading will be rejected for filing, under Rule 1:5-6(c),          if information above the black bar is not completed          or attorney's signature is not affixed</b>		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA	
			CHG/CK NO.	
			AMOUNT:	
			OVERPAYMENT:	
		BATCH NUMBER:		
ATTORNEY / PRO SE NAME ANDREW S. BERN, ESQ.		TELEPHONE NUMBER (973) 627-7300		COUNTY OF VENUE Morris
FIRM NAME (if applicable) EINHORN, HARRIS, ASCHER, BARBARITO & FROST, P.C.		DOCKET NUMBER (when available) <b>L-685-11</b>		
OFFICE ADDRESS 165 EAST MAIN STREET, DENVER, NEW JERSEY 07834		DOCUMENT TYPE COMPLAINT		
		JURY DEMAND <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
NAME OF PARTY (e.g., John Doe, Plaintiff) MARGARET HOWE		CAPTION MARGARET HOWE VS. MAGELLAN HEALTH SERVICES, INC.		
CASE TYPE NUMBER (See reverse side for listing) 616		IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input checked="" type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN		
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input checked="" type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY?		<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION				
<div style="writing-mode: vertical-rl; transform: rotate(180deg);">           RECEIVED AND FILED            SUPERIOR COURT            2011 MAR - 7 PM 3:09            CIVIL DIVISION         </div>				
 DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).				
ATTORNEY SIGNATURE: <i>Andrew S Bern</i>				

Side 2



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy; Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

**Track II - 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603 AUTO NEGLIGENCE - PERSONAL INJURY
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

**Track III - 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV - Active Case Management by Individual Judge / 450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Centrally Managed Litigation (Track IV)**

- 280 Zelnorm
- 285 Stryker Trident Hip Implants
- 288 Prudential Tort Litigation

**Mass Tort (Track IV)**

- |                                       |  |
|---------------------------------------|--|
| 248 CIBA GEIGY                        | 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL |
| 266 HORMONE REPLACEMENT THERAPY (HRT) | 282 FOSAMAX                            |
| 271 ACCUTANE                          | 283 DIGITEK                            |
| 272 BEXTRA/CELEBREX                   | 284 NUVARING                           |
| 274 RISPERDAL/SEROQUEL/ZYPREXA        | 286 LEVAQUIN                           |
| 275 ORTHO EVRA                        | 287 YAZ/YASMIN/OCELLA                  |
| 277 MAHWAH TOXIC DUMP SITE            | 601 ASBESTOS                           |
| 278 ZOMETA/AREXIA                     | 619 VIOXX                              |
| 279 GADOLINIUM                        |  |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐ Verbal Threshold☐ Putative Class Action☐ Title 59

EINHORN, HARRIS, ASCHER, BARBARITO & FROST  
A Professional Corporation  
165 E. Main Street  
P.O. Box 3010  
Denville, New Jersey 07834-3010  
(973) 627-7300  
Attorneys for Plaintiff

RECEIVED AND FILED  
SUPERIOR COURT  
2011 MAR -7 PM 3:19  
CIVIL DIVISION

MARGARET HOWE,	)	
	)	SUPERIOR COURT OF NEW JERSEY
Plaintiff,	)	LAW DIVISION: MORRIS COUNTY
	)	
vs.	)	Docket No. _____
	)	
	)	Civil Action
MAGELLAN HEALTH SERVICES,	)	
INC., JOHN DOE AND JANE DOES	)	<b>COMPLAINT</b>
1-10 (fictitious individuals presently	)	
unidentifiable individuals) AND ABC	)	
CORPORATIONS 1-10 (fictitious	)	
corporations or other business entities	)	
presently unidentifiable)	)	
	)	
Defendants.	)	
	)	
	)	
	)	
	)	

Plaintiff, Margaret Howe ("Howe"), a New Jersey resident, residing at 21 Shelley Place, Morristown, New Jersey 07960, through its counsel, Einhorn, Harris, Ascher, Barbarito & Frost, P.C. by way of Complaint against the Defendant, Magellan Health Services, Inc. ("Magellan"), alleges as follows:

**THE PARTIES**

1. Plaintiff, Howe, is a former employee of the Defendant, Magellan, and was employed by Defendant Magellan for approximately four years before her unlawful termination from Magellan on January 21, 2011. Howe was unlawfully terminated from Magellan in retaliation

for her disclosure and refusal to participate in conduct by Magellan that is unlawful, fraudulent and incompatible with a clear mandate of public policy.

2. Defendant, Magellan, having a principal business address at 6950 Columbia Gateway Drive, Suite 400, Columbia, Maryland, is a Delaware corporation that employed Plaintiff as Manager of the Appeals Department at the time of her termination at its 199 Pomeroy Road, Parsippany, New Jersey office. Magellan is licensed to do business in the State of New Jersey.

3. Defendants, John Does and/or Jane Does 1-10 are fictitious individuals who may have retaliated against or contributed, aided or abetted such conduct.

4. Defendants, ABC Corporations 1-10 are fictitious corporations which may have retaliated against or contributed, aided or abetted such conduct.

#### **FACTS COMMON TO ALL COUNTS**

5. Prior to her termination on January 21, 2011, Howe was employed by Magellan for approximately four years. Howe was hired by Magellan on or about August 26, 2006. Howe voluntarily ceased her employment with Magellan in April 2009. In or around July 2009 Howe was rehired by Magellan and received a promotion in grade level and a raise from her prior position with Magellan.

6. At the time of her termination, Howe was employed as Manager of the Magellan Appeals Department. Howe had maintained this position from August 2006 until her unlawful termination with the exception of a brief interruption from April 2009 until July 2009. Howe's position required her to generate reports and appeal analysis for Magellan and its clients, such as Horizon. Howe supervised a staff of approximately twelve employees at all relevant times.

7. Throughout Howe's employment with Magellan, she was an exemplary employee with a positive performance history. Howe consistently performed well in her performance evaluations, including the year prior to her termination.



8. At all relevant times, Howe's direct supervisor had been Nancy Tingley ("Tingley"). Tingley is employed by Magellan as the Director of Quality Improvement and Compliance. Tingley has been on disability on several occasions during the past two years as a result of serious health issues. During these extended time periods, Howe had assumed many of the employment responsibilities of Tingley and had been required to manage the Appeals Department, without additional staffing or resources. In addition, Howe was required to perform these responsibilities without additional compensation or management level support.

9. On or about November 12, 2010, without any prior warning or notice, Howe received a Performance Improvement Plan ("PIP") from her direct supervisor, Tingley. The PIP was dated November 3, 2010 and was classified as a written warning for poor performance. The PIP falsely alleged that Tingley had two detailed verbal communications with Howe with respect to her alleged inadequate performance as Manager of Appeals. Howe denies any prior verbal or written communication with Tingley regarding her alleged poor performance. Prior to this, Howe had never received any PIP or corrective action plan.

10. The PIP set forth numerous alleged reasons for necessary corrective action. In addition, the PIP set forth five specific expectations. Specifically, the fourth expectation set forth a requirement that Howe "ensure that timeliness performance guarantee standards are met on all appeal cases for fourth quarter 2010." This expectation was not set forth in the reason for corrective action or discussed with Howe upon receipt of the PIP. In fact, this expectation was unachievable without participation in a fraudulent appeal processing scheme that Howe was directed to engage in. Howe made this known to general manager, Tracey Sessa ("Sessa") along with several supervisors.

11. At the time Howe received the PIP, Sessa requested that Howe sign the PIP in order to agree to the corrective action plan set forth in the PIP. Howe refused to sign the PIP

and requested to review the PIP and prepare a response over the weekend. On November 16, 2010 Howe submitted a response to the PIP. Howe's response addressed each area of alleged concern by Magellan and highlighted the many additional responsibilities that Howe was required to assume as a result of Tingley's lengthy disability leaves. Although Howe's written response did not directly address the expectations regarding compliance with turnaround times, this issue was discussed with management.

12. The Appeals Department had always met the performance guarantees with Horizon from the commencement of Howe's employment in August 2006 until the fourth quarter of 2009 when Tingley went out on disability leave.

13. As set forth above, Tingley has taken several lengthy disability leaves beginning in 2008, the most recent beginning on or about October 29, 2010. During this time period, not only were the volume of appeals extensive, but Howe had to perform many of the functions of her supervisor while she was out on leave. In addition, as Magellan management was well aware, Howe was left without adequate resources and staff. Despite Tingley's absence, Tingley continued to run the Appeals Department through frequent emails and telephone communications. Tingley maintained complete oversight of the Appeals Department while out on leave and although Howe assumed many of the responsibilities, she was not given the authority to make changes or any significant decisions in the Appeals Department.

14. Tingley's instruction to Howe and others was that regardless of the circumstances, all appeals were to be processed consistent with the agreed upon turn-around times with Horizon, regardless of the manner in which it was accomplished. Howe refused to operate the Appeals Department in the unlawful manner that Tingley and Magellan demanded while Tingley was out on leave.

15. Throughout her employment with Magellan, Howe and others were instructed by



Tingley to date all appeal resolution letters utilizing that date the appeal was due, regardless of the actual later date the appeal was processed.

16. Additionally, if there was a significant gap between the date the appeal was supposed to be completed and the later actual date the appeal was processed, no copies of the appeal decision would be provided to the subscriber or Horizon and the document would simply be placed in the file.

17. Howe was instructed by her supervisor to delete any appeal from the system which could not have its date manipulated to show compliance. Magellan concocted this system of fraudulent manipulation of the appeals database so that Horizon could not discover the scheme, and which would insure that all deadlines were met and the performance guarantees fulfilled.

18. Howe was required to participate in this unlawful and fraudulent practice since she commenced employment with Magellan. This scheme was compulsory for the staff and known to many of Magellan's supervisors. The PIP that Howe received evidenced the compulsory nature of the fraudulent practice.

19. Many appeals coordinators were aware of Magellan's expectation that late appeals be manipulated in this fashion in order to avoid missed turn-around times and missed performance guarantees which could result in substantial contractual penalties to Magellan. Upon information and belief, the quarterly contractual penalty with a large customer, Horizon, was approximately \$500,000.00. In addition, missed turnaround could impact Magellan's ability to renew its contract with Horizon and other providers.

20. Although Howe was required to participate in this fraudulent practice while Tingley was working, Howe refused to engage in this manipulation of the appeals database while her supervisor was out on leave, which, along with various obstacles and insufficient resources, resulted in missed turn-around times beginning in the fourth quarter of 2009.

21. As a result of these obstacles, many of the appeal turn-around deadlines for the fourth quarter of 2009 and the first quarter 2010 were missed for Horizon, the largest client of Magellan. Upon information and belief, Horizon, along with other Magellan clients, are unaware of Magellan's fraudulent practices.

22. Instead of exercising its rights to a contractual performance penalty under its contract with Magellan, Magellan was placed on a corrective action plan by Horizon as a result of the non-compliance.

23. In an effort to complete the backlog of appeals, Howe and her appeals team worked every weekend from January to April, 2010 to process appeals. In many circumstances, in order to follow the management directives, the Appeals Department simply approved the appeal to reduce the backlog of appeals.

24. The issue of turn-around times and performance guarantees with respect to Howe was first raised in the PIP she received on or around November 12, 2010. In addition to Howe's November 16, 2010 response to the PIP, she discussed the unlawful manipulation of data with Sessa, the general manager and most senior employees at the Parsippany office location, on the day she received the PIP. At that time, Howe discussed the data manipulation with Sessa and the changing of inquiries as set forth above.

25. Furthermore, Howe advised her general manager, Sessa, that the performance guarantees were unattainable and explained to Sessa and Edward Martin ("Martin"), Director of Quality Improvement, the requirements set forth by Tingley and the manipulation of data that had been ongoing for years. Sessa and Martin engaged in an extensive dialogue regarding the unlawful practice by Magellan during a meeting at the Magellan office on or about December 3, 2010.

26. During that December 3, 2010 meeting, Howe explained to Sessa and Martin the

extent of the fraudulent practice being endorsed by the management of Magellan. She described a colleague, also a manager who expressed an unwillingness to handwrite fraudulent dates on the appeal presentation sheets presented to her for approval by subordinates requiring complete review during their training phase with the company. The appeal coordinators were instructed by Magellan to backdate the appeal presentation sheet to the date that the appeal was due, even though the date the appeal presentation sheet was prepared was often well after the due date of the appeal. Upon presentment to the manager by the appeals coordinator, the manager was required to sign and date the presentation sheet. The colleague of Ms. Howe described above, reported to Magellan that she refused to write in a date that predates the date the appeal was processed and then sign the form. Rather than fixing the problem, Magellan instructed the appeals coordinator to type in the date and have the manager sign so that the manager was not entering a fraudulent date. As such, Magellan perpetuated the fraud.

27. Howe advised Sessa and Martin that she had been required to participate in this unlawful practice throughout her employment with Magellan. Howe further advised Sessa and Martin that she refused to manipulate the data for the Horizon account as she had been instructed to do. Howe identified the reasons for the difficulty of the Appeals Department to meet turnaround times.

28. Following Howe's meeting with Sessa and Martin, Howe's job functions were changed and several responsibilities were stripped from her. Howe was required to undertake additional reporting to Sessa and Martin.

29. On or about December 15, 2010, Howe was instructed by Human Resources Generalist, Dan Devenny, that Magellan planned to keep the PIP in place despite her response, explanation and objections. Magellan never responded or agreed to discuss Howe's written response to the PIP.

30. During a meeting with Dan Devenny, Sessa and Doug Bowes on December 15, 2010, Magellan compelled Howe to go out on a paid leave while Magellan allegedly investigated her description of what was taking place in the Appeals Department.

31. Howe was not further questioned or required to provide any additional information following her suspension from Magellan. Upon information and belief, Magellan did not perform an adequate or objective investigation into the fraudulent practices.

32. On January 21, 2011 Howe was terminated by Magellan. Magellan alleged that Howe was terminated for mismanagement of the Appeals Department. This position by Magellan constitutes a pretext for an unlawful termination in retaliation for reporting activities protected by the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 et seq.

33. Howe was unlawfully terminated by Magellan as a direct and proximate result of her disclosure of the unlawful policy and practice of deception and/or misrepresentation which Magellan required Howe to participate in and which Magellan knowingly defrauded Horizon and other clients of Magellan.

34. As a result of the foregoing, Plaintiff has been damaged and will continue to be damaged.

**FIRST COUNT**  
**(Conscientious Employee Protection Act)**

35. The Plaintiff repeats and realleges the foregoing allegations of the Complaint as if fully set forth herein.

36. Tingley instruction to Howe and others that regardless of the circumstances, all appeals were to be processed consistent with the agreed upon turn-around time with Horizon, regardless of the manner in which it was accomplished. Howe refused to operate the Appeals

Department in the unlawful manner that Tingley and Magellan demanded while Tingley was out on leave.

37. Throughout her employment with Magellan, Howe and others were instructed by Tingley to date all appeal resolution letters utilizing that date the appeal was due, regardless of the actual later date the appeal was processed.

38. Additionally, if there was a significant gap between the date the appeal was supposed to be completed and the later actual date the appeal was processed, no copies of the appeal decision would be provided to the subscriber or Horizon and the document would simply be placed in the file.

39. Howe was instructed by her supervisor to delete any appeal from the system which could not have its date manipulated to show compliance. Magellan concocted this system of fraudulent manipulation of the appeals database so that Horizon could not discover the scheme, and which would insure that all deadlines were met and the performance guarantees fulfilled.

40. Howe was required to participate in this unlawful and fraudulent practice since she commenced employment with Magellan. This scheme was compulsory for the staff and known to many of Magellan's supervisors and managers.

41. This fraudulent practice was concealed by Magellan in an effort to maintain its contractual relationship with clients and obtain quarterly bonuses for meeting turnaround times. Upon information and belief, this practice defrauded Horizon, among numerous other Magellan clients.

42. In or around October 2010, Howe's supervisor went on leave as a result of a medical condition. As a result, Howe assumed many of the employment responsibilities of her supervisor.

43. Howe refused to engage in this manipulation of the appeals database while her



supervisor was out on leave, which, along with various obstacles and insufficient resources, resulted in missed turn-around times beginning in the fourth quarter of 2009.

44. As a result, Howe was placed on a PIP on or about November 12, 2010. As part of the PIP, Howe was directed to meet turnaround times which were impossible to meet without manipulation of the appeals database as set forth above.

45. Upon receipt of the PIP, Howe discussed the fraudulent manipulation of the appeals database with the General Manager of the Parsippany office, Sessa. Howe again refused to participate in this manipulation.

46. On December 3, 2010 Howe again discussed the fraudulent practices of Magellan with Sessa and Martin. Following that meeting Howe was stripped of many of her employment responsibilities.

47. On December 15, 2010, Magellan compelled Howe to go out on a paid leave while Magellan investigated her report.

48. On January 21, 2011 Howe was terminated by Magellan as a result of her disclosure of Magellan's fraudulent practices and refusal to participate.

49. Howe is a protected employee under N.J.S.A. 34:19-3. Howe was disciplined and terminated as a result of her disclosure of Magellan's fraudulent practices and policy/practice of deception and misrepresentation involving a client of Magellan.

50. Howe was disciplined and terminated as a result of her refusal to participate in Magellan's fraudulent practices and policy/practice of deception and misrepresentation involving a client of Magellan. In addition, Howe was disciplined and terminated as a result of her refusal to participate in Magellan's practices that were incompatible with a clear mandate of public policy concerning the public health, safety or welfare.

51. Defendants conduct violates the Conscientious Employee Protection Act as set

forth in N.J.S.A. 34:19-1, *et. seq.*

52. As a proximate result of Defendant's conduct, Plaintiff has been damaged and continues to be damaged.

**WHEREFORE**, Plaintiff requests judgment against Defendant as follows:

- a. Back pay for lost wages, benefits and other remuneration;
- b. Compensatory, consequential and punitive damages;
- c. Reinstatement to Howe's position held at the time of her termination;
- d. Award of costs of suit and attorney fee pursuant to N.J.S.A. 34:19-5;
- e. Any other damages this Court deems just and equitable.

EINHORN, HARRIS, ASCHER,  
BARBARITO & FROST  
Attorneys for Plaintiff

BY: Andrew S. Berns  
ANDREW S. BERNs

Dated: March 7, 2011

**JURY DEMAND**

The Plaintiff hereby demands a trial by jury on all triable issues.

EINHORN, HARRIS, ASCHER,  
BARBARITO & FROST  
Attorneys for Plaintiff

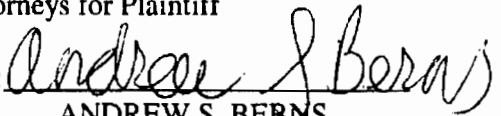
BY: Andrew S. Berns  
ANDREW S. BERNs

Dated: March 7, 2011

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to Rule 4:25-4, Andrew S. Berns, Esq. is hereby designated trial counsel for Plaintiff.

**EINHORN, HARRIS, ASCHER,  
BARBARITO & FROST**  
Attorneys for Plaintiff

BY:   
ANDREW S. BERNs

Dated: March 7, 2011

**CERTIFICATION PURSUANT TO R. 1:38-7(c)**

I, Andrew S. Berns, do hereby certify that confidential personal identifiers have been redacted from documents now submitted to the Court and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

**EINHORN, HARRIS, ASCHER,  
BARBARITO & FROST, P.C.**  
Attorneys for Plaintiff

BY:   
ANDREW S. BERNs

Dated: March 7, 2011

**CERTIFICATION PURSUANT TO RULE 4:5-1**

I, Andrew S. Berns certify that:

1. I am an attorney at law of the State of New Jersey, and a Partner with Einhorn, Harris, Ascher, Barbarito & Frost, PC, attorneys for the Plaintiff, Margaret Howe.
2. Upon information and belief, the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding; and no other action or

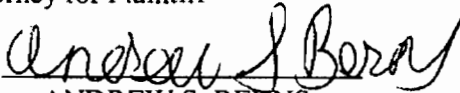


arbitration proceeding is contemplated. At this time, Plaintiff knows of no other party who should be joined in the action.

3. The within pleading was filed with the Court and served upon all counsel of record within the time period prescribed by the Rules of the Court, or as agreed to by all the parties.

I CERTIFY that the foregoing statements made by me are true. I am aware that if any of the statements are willfully false, I am subject to punishment.

**EINHORN, HARRIS, ASCHER,  
BARBARITO & FROST, P.C.**  
Attorney for Plaintiff

BY:   
ANDREW S. BERNES


Dated: March 7, 2011

EINHORN, HARRIS, ASCHER, BARBARITO & FROST  
A Professional Corporation  
165 E. Main Street  
P.O. Box 3010  
Denville, New Jersey 07834-3010  
(973) 627-7300  
Attorneys for Plaintiff

MARGARET HOWE	)	
Plaintiff(s),	)	SUPERIOR COURT OF NEW JERSEY
	)	LAW DIVISION:MORRIS COUNTY
vs.	)	
	)	Docket No: MRS-L-00685-11
MAGELLAN HEALTH SERVICES, INC.,	)	
JOHN DOE AND JANE DOES 1-10	)	Civil Action
(fictitious individuals presently	)	
unidentifiable individuals) AND ABC	)	<b>ACKNOWLEDGMENT SERVICE</b>
CORPORATIONS 1-10 (fictitious	)	<b>PURSUANT TO <u>R. 4:4-6</u></b>
corporations or other business entities	)	
presently unidentifiable)	)	
	)	
	)	
Defendant(s).	)	

The undersigned representative for defendant, MAGELLAN HEALTH SERVICES, INC. in the above-captioned matter, hereby acknowledges service of the within Summons and Complaint pursuant to R. 4:4-6 this 14<sup>th</sup> day of March, 2011.

MAGELLAN HEALTH SERVICES, INC.

BY:   
MICHAEL P. MCQUILLEN  
VICE PRESIDENT AND ASSOCIATE  
GENERAL COUNSEL